

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 JASON BERBERENA-GARCIA

4 Plaintiff

5 v.
6 EDWIN AVILES, et al

7 Defendants

Civil No. 06-1907 (SEC)

8
9 **OPINION and ORDER**

10 Pursuant to Plaintiff's filing of Defendants' offer of judgment, and its acceptance of the
11 same at Docket # 140, this Court entered judgment for \$50,000, plus costs accrued. Docket #
12 155. Upon this Court's denial of their motion for reconsideration, on June 10, 2009, Defendants
13 filed a notice of appeal. Docket # 175. Shortly thereafter, Plaintiff filed a motion requesting
14 attorney's fees and expenses, as well as the bill of costs (Dockets ## 157 & 160), and
15 Defendants filed their opposition (Dockets # 169 & 172). In their opposition, Defendants
16 request that Plaintiff's motion requesting attorney's fees, and bill of costs be stayed. Docket #
17 172. Finally, Defendants filed a "Motion Requesting Stay of Enforcement of Judgment Pending
18 Appeal and Waiver of *Supersedeas* Bond." Docket # 178. Defendants request that, pending the
19 appeal, this Court grant an unsecured stay of the execution of judgment. Docket # 178. In
20 support of said request, Defendants rely on their plain capacity to pay the judgment. Plaintiffs
21 oppose, arguing that Defendants' filing of an appeal without posting a *supersedeas* bond does
22 not relieve Defendants from their obligation to comply with this Court's Judgment.

23 Pursuant to FED. R CIV. P. 62(d), a party appealing a monetary judgment may request a
24 stay to enforce the district court's judgment, upon the posting of a *supersedeas* bond. This
25 district has noted that "the underlying purpose of the bond is to 'protect the interest of the
26 judgment creditor whose execution is pending the outcome of the appeal.'" Perez Rodriguez v.

1 CIVIL NO. 06-1907 (SEC)

Page 2

2

3 Rey Hernandez, 304 F. Supp. 2d 227, 228 (D.P.R. 2004) (citing Rivera Perez v. Massachusetts
 4 General Hospital, 193 F.R.D. 43, 44 (D.P.R. 2000)). Therefore, the prevailing plaintiff is
 5 protected “from the risk of a later uncollectible judgment and compensates him for the delay in
 6 the entry of final judgment.” Id. (internal citations omitted.) Notwithstanding, courts have held
 7 that there is no bond requirement if: “(1) the defendant’s ability to pay is so plain that the
 8 posting of a bond would be a waste of money; or (2) the bond would put the defendant’s other
 9 creditors in undue jeopardy.” Id. at 228-229 (citing Acevedo-Garcia v. Vera-Monroig, 296 F.3d
 10 13, 17 (1st Cir. 2002). The First Circuit has held that “the issuance of a stay depends on
 11 ‘whether the harm caused [movant] without the [stay], in light of the [movant’s] likelihood of
 12 eventual success on the merits, outweighs the harm the [stay] will cause [the non-moving
 13 party].” Acevedo-Garcia v. Vera-Monroig, 296 F.3d at 16-17 (citing United Steelworkers of
 14 America v. Textron, Inc., 836 F.2d 6, 7 (1st Cir. 1987) (internal quotations omitted).

15 After reviewing the pleadings, this Court concludes that Defendants’ assertions of their
 16 ability to pay are insufficient to bypass the requirement of a bond, in order to stay the execution
 17 of judgment. Specifically, Defendants have not provided adequate documentation supporting
 18 their capacity to satisfy this Court’s judgment. As a result, this Court cannot make such a
 19 determination. See Acevedo-Garcia v. Vera-Monroig, 296 F.3d at 17. Notwithstanding, this
 20 Court finds that a bond in the full amount of Defendants’ debt with Plaintiff should not be
 21 imposed, insofar as the amount of attorney’s fees and costs are yet to be determined. Moreover,
 22 Defendants’ appeal hinges on Plaintiff’s right to claim attorney’s fees and costs. Accordingly,
 23 this Court **ORDERS** Defendants to post a *supersedeas* bond for \$50,000¹ by **July 24, 2009**.
 24 Once Defendants comply with this order, and the bond is posted, execution of this Court’s

25

26 ¹ There is no controversy as to the fact that the offer of judgment is \$50,000. Defendants are
 only contesting the imposition of attorney’s fees, and costs.

1 CIVIL NO. 06-1907 (SEC)

2 Page 3

3 judgment will automatically be stayed. Defendants are forewarned that upon their failure to post
4 the *supersedeas* bond within the deadline provided, Plaintiff is entitled to immediately request
5 the execution of this Court's judgment.

6 **IT IS SO ORDERED.**

7 San Juan, Puerto Rico, this 7th day of July, 2009.

8 *S/*Salvador E. Casellas
9 Salvador E. Casellas
U.S. District Judge